

IC 4-22-2.1

Chapter 2.1. Rules Affecting Small Businesses

IC 4-22-2.1-1

Application of chapter; exemption for certain rules

Sec. 1. Except for a rule that is the subject of a rulemaking action under IC 13-14-9, IC 22-12, IC 22-13, IC 22-14, or IC 22-15, this chapter applies to a rule for which the notice required by IC 4-22-2-23 is published by an agency after June 30, 2005.

As added by P.L.188-2005, SEC.4. Amended by P.L.139-2007, SEC.1.

IC 4-22-2.1-2

Application of definitions in rulemaking statute

Sec. 2. The definitions in IC 4-22-2-3 apply throughout this chapter.

As added by P.L.188-2005, SEC.4.

IC 4-22-2.1-3

"Corporation"

Sec. 3. As used in this chapter, "corporation" refers to the Indiana economic development corporation established by IC 5-28-3-1.

As added by P.L.188-2005, SEC.4.

IC 4-22-2.1-4

"Small business"

Sec. 4. As used in this chapter, "small business" has the meaning set forth in IC 5-28-2-6.

As added by P.L.188-2005, SEC.4. Amended by P.L.110-2010, SEC.4.

IC 4-22-2.1-5

Rules affecting small businesses; economic impact statement required; full implementation of rules; submission of statement to small business ombudsman

Sec. 5. (a) If an agency intends to adopt a rule under IC 4-22-2 that will impose requirements or costs on small businesses, the agency shall prepare a statement that describes the annual economic impact of a rule on all small businesses after the rule is fully implemented as described in subsection (b). The statement required by this section must include the following:

- (1) An estimate of the number of small businesses, classified by industry sector, that will be subject to the proposed rule.
- (2) An estimate of the average annual reporting, record keeping, and other administrative costs that small businesses will incur to comply with the proposed rule.
- (3) An estimate of the total annual economic impact that compliance with the proposed rule will have on all small businesses subject to the rule. The agency is not required to submit the proposed rule to the office of management and

budget for a fiscal analysis under IC 4-22-2-28 unless the estimated economic impact of the rule is greater than five hundred thousand dollars (\$500,000) on all regulated entities, as set forth in IC 4-22-2-28.

- (4) A statement justifying any requirement or cost that is:
 - (A) imposed on small businesses by the rule; and
 - (B) not expressly required by:
 - (i) the statute authorizing the agency to adopt the rule; or
 - (ii) any other state or federal law.

The statement required by this subdivision must include a reference to any data, studies, or analyses relied upon by the agency in determining that the imposition of the requirement or cost is necessary.

- (5) A regulatory flexibility analysis that considers any less intrusive or less costly alternative methods of achieving the purpose of the proposed rule. The analysis under this subdivision must consider the following methods of minimizing the economic impact of the proposed rule on small businesses:

- (A) The establishment of less stringent compliance or reporting requirements for small businesses.
- (B) The establishment of less stringent schedules or deadlines for compliance or reporting requirements for small businesses.
- (C) The consolidation or simplification of compliance or reporting requirements for small businesses.
- (D) The establishment of performance standards for small businesses instead of design or operational standards imposed on other regulated entities by the rule.
- (E) The exemption of small businesses from part or all of the requirements or costs imposed by the rule.

If the agency has made a preliminary determination not to implement one (1) or more of the alternative methods considered, the agency shall include a statement explaining the agency's reasons for the determination, including a reference to any data, studies, or analyses relied upon by the agency in making the determination.

- (b) For purposes of subsection (a), a proposed rule will be fully implemented with respect to small businesses after:

- (1) the conclusion of any phase-in period during which:
 - (A) the rule is gradually made to apply to small businesses or certain types of small businesses; or
 - (B) the costs of the rule are gradually implemented; and
- (2) the rule applies to all small businesses that will be affected by the rule.

In determining the total annual economic impact of the rule under subsection (a)(3), the agency shall consider the annual economic impact on all small businesses beginning with the first twelve (12) month period after the rule is fully implemented. The agency may use actual or forecasted data and may consider the actual and anticipated effects of inflation and deflation. The agency shall

describe any assumptions made and any data used in determining the total annual economic impact of a rule under subsection (a)(3).

(c) The agency shall:

- (1) publish the statement required under subsection (a) in the Indiana Register as required by IC 4-22-2-24; and
- (2) deliver a copy of the statement, along with the proposed rule, to the small business ombudsman designated under IC 4-4-35-8 not later than the date of publication under subdivision (1).

As added by P.L.188-2005, SEC.4. Amended by P.L.1-2006, SEC.75; P.L.123-2006, SEC.17; P.L.110-2010, SEC.5; P.L.187-2014, SEC.11.

IC 4-22-2.1-6

Review by economic development corporation; consideration of written comments by agency

Sec. 6. (a) Not later than seven (7) days before the date of the public hearing set forth in the agency's notice under IC 4-22-2-24, the corporation shall do the following:

(1) Review the proposed rule and economic impact statement submitted to the corporation by the agency under section 5(c) of this chapter.

(2) Submit written comments to the agency on the proposed rule and the economic impact statement prepared by the agency under section 5 of this chapter. The corporation's comments may:

(A) recommend that the agency implement one (1) or more of the regulatory alternatives considered by the agency under section 5(a)(5) of this chapter;

(B) suggest regulatory alternatives not considered by the agency under section 5(a)(5) of this chapter;

(C) recommend any other changes to the proposed rule that would minimize the economic impact of the proposed rule on small businesses; or

(D) recommend that the agency abandon or delay the rulemaking action until:

(i) more data on the impact of the proposed rule on small businesses can be gathered and evaluated; or

(ii) less intrusive or less costly alternative methods of achieving the purpose of the proposed rule can be effectively implemented with respect to small businesses.

(b) Upon receipt of the corporation's written comments under subsection (a), the agency shall make the comments available:

(1) for public inspection and copying at the offices of the agency under IC 5-14-3;

(2) electronically through the electronic gateway administered under IC 4-13.1-2-2(a)(5) by the office of technology; and

(3) for distribution at the public hearing required by IC 4-22-2-26.

(c) Before finally adopting a rule under IC 4-22-2-29, and in the

same manner that the agency considers public comments under IC 4-22-2-27, the agency must fully consider the comments submitted by the corporation under subsection (a). After considering the comments under this subsection, the agency may:

- (1) adopt any version of the rule permitted under IC 4-22-2-29;
- or
- (2) abandon or delay the rulemaking action as recommended by the corporation under subsection (a)(2)(D), if applicable.

As added by P.L.188-2005, SEC.4. Amended by P.L.198-2007, SEC.1.

IC 4-22-2.1-7

Review of rule before readoption

Sec. 7. Before an agency may act under IC 4-22-2.5 to readopt a rule to which the chapter applies, the agency must conduct the review required under IC 4-22-2.5-3.1.

As added by P.L.188-2005, SEC.4.

IC 4-22-2.1-8

Small businesses' right of action to determine agency's compliance

Sec. 8. (a) This section applies to a small business that is adversely affected or aggrieved by a rule that:

- (1) is subject to this chapter;
- (2) is finally adopted by an agency under IC 4-22-2-29; and
- (3) has taken effect under IC 4-22-2-36.

(b) Subject to subsection (c), a small business described in subsection (a) may file, in a court having jurisdiction, an action seeking a determination of the agency's compliance with the requirements of this chapter during the rulemaking process. Upon receipt of a complaint under this section, the court shall, at the earliest date possible, hear evidence on the matter and make a determination as to the agency's compliance with this chapter during the rulemaking process. If the court determines that the agency failed to comply with one (1) or more requirements of this chapter, the court may issue an order or injunction enjoining the agency from enforcing the rule with respect to the complaining small business and any similarly situated small businesses. A determination of the court under this section is final, subject to the right of direct appeal by either party.

(c) A small business that seeks a determination by a court under subsection (b) must file the action described in subsection (b) not later than one year (1) after the date the rule described in subsection (a) takes effect under IC 4-22-2-36.

As added by P.L.188-2005, SEC.4. Amended by P.L.53-2014, SEC.62.